

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:09CR142
	)	
v.	)	
	)	
DAVID W. KOFOED,	)	ORDER
	)	
Defendant.	)	
_____	)	

This matter is before the Court on the report and recommendation of the magistrate judge (Filing No. [63](#)), in which it is recommended that defendant's motion to dismiss Count II pursuant to 18 U.S.C. § 242 (Filing No. [48](#)) and defendant's motion to file out of time (Filing No. [44](#)) be denied.

The defendant has filed an objection to the report (Filing No. [71](#)) in which he suggests that the magistrate judge interpreted the thrust of his motion to dismiss. However, the Court has reviewed the magistrate judge's report and recommendation and rejects defendant's observation that the thrust of his motion was misinterpreted. The Court has conducted a de novo review of the defendant's objection, the briefs filed by the parties, and the report and recommendation, and defendant's statement of objection to that report, and finds the report and recommendation should be approved and adopted by the Court. Accordingly,

IT IS ORDERED:

1) The report and recommendation of the magistrate judge is approved and adopted.

2) Defendant's objection is overruled.

2) Defendant's motion to dismiss and motion to file out of time are denied.

DATED this 20th day of August, 2009.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court